



State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

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Tanx Corporation
30 Crescent Street
Claremont, NH 03743

**NOTICE OF PROPOSED
ADMINISTRATIVE FINE
AND HEARING
No. AF 01-040**

MAY 30, 2001

ADMINISTRATIVELY CLOSED

I. Introduction

This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Air Resources Division ("the Division"), to Tanx Corporation, pursuant to RSA 125-C:15,I-b and Env-C 601.05. The Division is proposing that fines totaling \$5,325 be imposed against Tanx Corporation for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

II. Parties

1. The Department of Environmental Services, Air Resources Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, Concord, NH.
2. Tanx Corporation ("Tanx") is a New Hampshire corporation having a mailing address of 30 Crescent Street, Claremont, New Hampshire 03743.

III. Summary of Facts and Law Supporting Claim(s)

1. RSA 125-C authorizes the Department of Environmental Services ("DES") to regulate sources of air pollution. RSA 125-C:4 authorizes the Commissioner of DES to adopt rules relative to the prevention, control, abatement, and limitation of air pollution in New Hampshire. Pursuant to this authority, the Commissioner has adopted NH Admin. Rules Env-A 100 *et seq.*
2. RSA 125-I authorizes DES to regulate releases of toxic chemicals into the ambient air. RSA 125-I:6 authorizes the Commissioner of DES to adopt rules relative to the establishment of ambient air limits for each regulated toxic air pollutant and methodologies for determining whether an emission of a regulated toxic air pollutant will exceed the applicable ambient air limit at the source's compliance boundary. Pursuant to this authority, the Commissioner has adopted Env-A 1400.
3. RSA 125-C:15,I-b(b) authorizes the Commissioner to impose administrative fines of up to \$2,000 per offense for violations of RSA 125-C. RSA 125-I:3-a authorizes the Commissioner to impose administrative fines of up to \$2,000 per offense for violations of RSA 125-I. RSA 125-I:3-a, III provides that violations of RSA 125-I shall be determined in accordance with RSA 125-C:15,I-b(b).

4. On July 1, 1996, Tanx submitted a Title V application for an existing underground storage tank ("UST") manufacturing operation, which involves welding, fiberglass spraying, and stenciling tanks, and for a new aboveground storage tank ("AST") manufacturing operation, which involves welding and spray-painting tanks. The application requested a limit of 9.9 tons per year for AST painting in order to opt out of requirements pertaining to reasonably available control technology for emissions of volatile organic compounds (VOC RACT). The application did not contain any information regarding a stack fabrication or painting operation.
5. On January 23, 2001, Tanx, through its consultant Calex Environmental, submitted a letter and information on a proposed stack fabrication and painting operation. Specifically, the letter stated that the proposed stack fabrication operation had a potential to emit 16 tons of VOCs. The information provided also included a spreadsheet that listed the regulated toxic air pollutants that would be emitted by the stack painting operation and a statement that the impacts from the chemical species in the paints would be below established ambient air limits and would comply with Env-A 1400. Lastly, the letter contained a statement that all coatings comply with VOC RACT limits.
6. The Division evaluated the information submitted in the January 23, 2001 letter and determined that it does not contain sufficient information to determine whether the coatings being used by Tanx comply with VOC RACT limits.
7. On February 2, 2001, Division personnel called Mr. Peter LeHaise of Tanx to discuss operations and notify Mr. LeHaise of the content of a letter that was going to be faxed that same day. The Division faxed the letter on the afternoon of February 2, 2001. The letter stated that additional information was necessary to continue review of the Title V application and that Tanx must submit a permit application to DES prior to commencing stack fabrication and stack painting operations.
8. On February 7, 2001, Division personnel went to Tanx in order to observe testing during scheduled spraying of a 6,000-gallon UST. Division personnel observed that there were painted stacks at Tanx's facility. Division personnel asked Tanx personnel when the stacks were painted and were informed that the stacks were painted on February 2, 2001 and February 5, 2001.
9. On February 15, 2001, Division personnel inspected Tanx. During the inspection, Division personnel observed Tanx personnel spray-painting stacks. Division personnel asked to see records such as purchase orders for the paint, operating or production logs, documentation on the size and quantity of the stacks that had been manufactured, and the quantity of paint kits used to date. The only record that Tanx personnel could produce was a product data sheet.
10. During the February 15, 2001 inspection, the Division inspectors were told by Tanx personnel that the specifications of the paint that was currently being used was not the same as the specifications provided in the January 23, 2001 letter that Tanx sent to DES. Tanx did not have documentation of the Env-A 1400 compliance demonstration for the new paints. A paint sample was taken during the inspection.
11. On February 16, 2001, Tanx, through its consultant Calex Environmental, submitted information on the stack fabrication and painting operation. The letter stated that the January 23, 2001 submittal for the manufacture of the steel stacks needed to be revised and that DES should

disregard the data submitted in the letter. The February 16, 2001 letter stated that the worst case potential to emit is about 6.61 tons per year of VOCs and that the impacts for the chemical species in the paints are well below the ambient air limits and comply with Env-A 1400.

12. DES had the paint sample that was taken during the February 15, 2001 analyzed using EPA Method 24. The results showed that the paint is compliant with the VOC RACT limits.

13. Env-A 1450.01 establishes the list of regulated toxic air pollutants and corresponding ambient air limits.

14. RSA 125-I:5, I, states that no person shall operate any device or process at a stationary source that emits a regulated toxic air pollutant without a temporary or operating permit issued by [DES] in accordance with this chapter or RSA 125-C, unless specifically exempt under RSA 125-I:3, III, or whose uncontrolled emissions of regulated toxic air pollutants do not exceed ambient air limits at or beyond the compliance boundary and for which no other permit is required under RSA 125-C.

15. RSA 125-C:6, authorizes DES to establish and operate a statewide system under which permits shall be required for the construction, installation, operation or material modification of air pollution devices and sources.

16. Env-A 607.01 requires the owner of a new or modified stationary source or device to obtain a temporary permit prior to the construction or installation of the source or device if the source or device is any of the following:

- a. Env-A 607.01(n) "a stationary source, area source or device choosing to limit its potential to emit by accepting enforceable permit conditions which restrict its hours of operation, type or amount of material combusted, stored or processed or level of production," or
- b. Env-A 607.01(x) "a stationary source or device subject to the rules governing reasonably available control technology (RACT) as contained in Env-A 1200."

17. RSA 125-I:2,X defines a modification as "any physical change in a stationary source or device which increases the amount of a specific regulated toxic air pollutant emitted by such source or device, or which results in the emission of any additional regulated toxic air pollutant."

18. Env-A 101.177 defines a modification, for the purposes of RSA 125-C, as any "physical or operational change in a stationary source or device which increases the amount of a specific air pollutant emitted by such source or device, or which results in the emission of any additional air pollutant..."

19. Env-A 1204 establishes provisions regarding the implementation of reasonably available control technology on certain VOC-emitting processes.

20. Pursuant to Env-A 1204.15, all sources whose miscellaneous metal parts and products coating operations have combined theoretical potential to emit which equal or exceed ten (10) tons per year of non-exempt VOCs are subject to the VOC RACT regulations, and hence, require a permit pursuant to Env-A 607.01.

21. Env-A 902 requires that any owner or operator of a source or device which discharges air pollutants into the ambient air and is exempt from the general record keeping requirements to make available to the division upon request, any records relating to production data, material usage, equipment manufacturer's specifications, material safety data sheets, regulated air pollutant emissions, and such other similar records, data, and information.

22. Env-A 1404.01 requires the owner of a device or process that emits a regulated toxic air pollutant to demonstrate compliance in accordance with methods specified in Env-A 1404.01(c)(1)-(4).

23. Env-A 1404.01(d) requires that documentation for the demonstration of compliance be retained at the site and made available to DES for inspection.

IV. Violations Alleged

1. Tanx has violated RSA 125-C, Env-A 607, and RSA 125-I by painting stacks on February 2, 2001, without applying for and obtaining a permit from DES.

2. Tanx has violated RSA 125-C, Env-A 607, and RSA 125-I by painting stacks on February 5, 2001, without applying for and obtaining a permit from DES.

3. Tanx has violated RSA 125-C and Env-A 902 for failing to maintain required records at its facility.

4. Tanx has violated Env-A 1400 by failing to retain and make available to the Division for inspection on February 15, 2001, documentation to demonstrate compliance for the stack fabrication and painting operation.

V. Proposed Administrative Fines

1. The Division has determined the violation identified in IV.1, above, to be a moderate deviation from the requirements with moderate potential for harm. RSA 125-C:15, I-b specifies a range of \$851 to \$1,500. The Division is seeking a fine of \$1,175 for this violation.

2. The Division has determined the violation identified in IV.2, above, to be a major deviation from the requirements with moderate potential for harm. RSA 125-C:15, I-b specifies a range of \$1,251 to \$1,750. The Division is seeking a fine of \$1,500 for this violation.

3. The Division has determined the violation identified in IV.3, above, to be a major deviation from the requirements with major potential for harm. RSA 125-C:15, I-b specifies a range of \$1,501 to \$2,000. The Division is seeking a fine of \$1,750 for this violation.

4. The Division has determined the violation identified in IV.4, above, to be a major deviation from the requirements with minor potential for harm. RSA 125-C:15, I-b specifies a range of \$851 to \$1,500. The Division is seeking a fine of \$900 for this violation.

The total fine being sought is \$5,325.

VI. Hearing, Required Response

Tanx has the right to a hearing to contest the Division's allegations before the fine is imposed. A hearing on this matter has been scheduled for **Monday, August 13, 2001 at 9:00 a.m. in Room C-110** of the DES offices at **6 Hazen Drive** in Concord, NH. **Pursuant to Env-C 601.06, Tanx is required to respond to this notice. Please respond no later than June 29, 2001** using the enclosed colored form as follows:

1. If Tanx plans to attend the hearing, please have an authorized representative sign the appearance (upper portion) and return it to James Ballentine, DES Enforcement Paralegal, at the address noted on the form.
2. If Tanx chooses to waive the hearing and pay the proposed fine, please have an authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to Mr. Ballentine.
3. If Tanx wishes to discuss the possibility of settling the case, please have an authorized representative sign the appearance and return it to Mr. Ballentine **and** call Mr. Ballentine to indicate Tanx's interest in settling.

Tanx is not required to be represented by an attorney. If Tanx chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

If Tanx wishes to have a hearing but is unable to attend as scheduled, Tanx must notify Mr. Ballentine at least one week in advance of the hearing and request that the hearing be rescheduled. If Tanx does not notify Mr. Ballentine in advance and do not attend the hearing, the hearing will be conducted anyway in accordance with Env-C 204.09.

VII. Determination of Liability for Administrative Fines

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that Tanx committed the violations alleged and that the total amount of fines sought is the appropriate amount under the applicable statute and rules. Proving something by a preponderance of the evidence - means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that Tanx committed the violations and that the amount of fines sought is the appropriate amount under the applicable statute and rules, then the fines sought will be imposed, subject to the following:

Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that Tanx proves, by a preponderance of the evidence**, applies in this case:

1. The violation was a one-time or non-continuing violation, **and** Tanx did not know about the requirement when the violation occurred, the violation has not continued or reoccurred

as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** Tanx did not benefit financially, whether directly or indirectly, from the violation.

2. At the time the violation was committed, Tanx was making a good faith effort to comply with the requirement that was violated.

3. Tanx has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.

4. Other information exists which is favorable to Tanx's case which was not known to the Division at the time the fine was proposed.

IMPORTANT NOTICE

The hearing that has been scheduled is a formal hearing. The hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that Tanx committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is Tanx's opportunity to present testimony and evidence that Tanx did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If Tanx has any evidence, such as photographs, business records or other documents, which Tanx believes show that Tanx did not commit the violation(s) or that otherwise support Tanx's position, Tanx should bring the evidence to the hearing. Tanx may also bring witnesses (other people) to the hearing to testify on your behalf.

If Tanx wishes to have an informal meeting to discuss the issues, Tanx must contact Mr. Ballentine at (603) 271-6072 to request a prehearing conference.

Information regarding this proposed fine may be made available to the public via DES's Web page (www.state.nh.us/des). If you have any questions about this matter, please contact James Ballentine, DES Enforcement Paralegal, at (603) 271-6072.


COPY
Kenneth A. Colburn, Director
Air Resources Division

Enclosure (NHDES Fact Sheet #CO-2 2000)

cc Gretchen Rule, DES Enforcement Coordinator
Susan Alexant, DES Hearings and Rules Attorney